

FIRST REGULAR SESSION

# SENATE BILL NO. 220

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODMAN.

Read 1st time January 22, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

1173S.01I

## AN ACT

To amend chapter 320, RSMo, by adding thereto nine new sections relating to reduced ignition propensity cigarettes, with penalty provisions and an effective date.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 320, RSMo, is amended by adding thereto nine new sections, to be known as sections 320.350, 320.353, 320.356, 320.359, 320.362, 320.365, 320.368, 320.371, and 320.374, to read as follows:

**320.350. 1. Sections 320.350 to 320.374 shall be known and may be cited as the "Fire Safety Standard and Firefighter Protection Act".**

**2. As used in sections 320.350 to 320.374, the following terms shall mean:**

**(1) "Agent", any person authorized by the department of revenue to purchase and affix stamps on packages of cigarettes;**

**(2) "Cigarette":**

**(a) Any roll of tobacco wrapped in paper or in any substance not containing tobacco; or**

**(b) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette as described in paragraph (a) of this subdivision;**

**(3) "Department", the department of revenue;**

**(4) "Manufacturer":**

**(a) Any entity which manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that such manufacturer intends to be sold in this state, including cigarettes intended to be sold in the United States through**

21 an importer; or

22 (b) Any entity that becomes a successor of an entity described in  
23 paragraph (a) of this subdivision;

24 (5) "Quality control and quality assurance program", the  
25 laboratory procedures implemented to ensure that operator bias,  
26 systematic and nonsystematic methodological errors, and equipment-  
27 related problems do not affect the results of the testing. Such a  
28 program shall ensure that the testing repeatability remains within the  
29 required repeatability values stated in subdivision (6) of subsection 1  
30 of section 320.353 for all test trials used to certify cigarettes in  
31 accordance with sections 320.350 to 320.374;

32 (6) "Repeatability", the range of values within which the repeat  
33 results of cigarette test trials from a single laboratory will fall ninety-  
34 five percent of the time;

35 (7) "Retail dealer", any person, other than a manufacturer or  
36 wholesale dealer, engaged in selling cigarettes or tobacco products;

37 (8) "Sale", any transfer of title or possession, or both, exchange  
38 or barter, conditional or otherwise, in any manner or by any means  
39 whatsoever or any agreement therefor. In addition to cash and credit  
40 sales, the giving of cigarettes as samples, prizes, or gifts, and the  
41 exchanging of cigarettes for any consideration other than money shall  
42 be considered sales;

43 (9) "Sell", to sell, or offer or agree to do the same;

44 (10) "Wholesale dealer", any person other than a manufacturer  
45 who sells cigarettes or tobacco products to retail dealers or other  
46 person for purposes of resale, and any person who owns, operates, or  
47 maintains one or more cigarette or tobacco product vending machines  
48 in, at, or upon premises owned or occupied by any other person.

320.353. 1. Except as provided in subsection 7 of this section, no  
2 cigarettes shall be sold or offered for sale in this state or offered for  
3 sale or sold to persons located in this state unless the cigarettes have  
4 been tested in accordance with the test method and meet the  
5 performance standard specified in this section, a written certification  
6 has been filed by the manufacturer with the state fire marshal in  
7 accordance with section 320.356, and the cigarettes have been marked  
8 in accordance with section 320.359. The following shall apply to such  
9 testing:

10           (1) Testing of cigarettes shall be conducted in accordance with  
11 the American Society of Testing and Materials (ASTM) standard E2187-  
12 04, "Standard Test Method for Measuring the Ignition Strength of  
13 Cigarettes";

14           (2) Testing shall be conducted on ten layers of filter paper;

15           (3) No more than twenty-five percent of the cigarettes tested in  
16 a test trial in accordance with this section shall exhibit full-length  
17 burns. Forty replicate tests shall comprise a complete test trial for  
18 each cigarette tested;

19           (4) The performance standard required by this section shall only  
20 be applied to a complete test trial;

21           (5) Written certifications shall be based upon testing conducted  
22 by a laboratory that has been accredited under standard ISO/IEC 17025  
23 of the International Organization for Standardization (ISO), or other  
24 comparable accreditation standard required by the state fire marshal;

25           (6) Laboratories conducting testing in accordance with this  
26 section shall implement a quality control and quality assurance  
27 program that includes a procedure that will determine the  
28 repeatability of the testing results. The repeatability value shall be no  
29 greater than nineteen one-hundredths;

30           (7) Nothing in this section shall be construed as requiring  
31 additional testing if cigarettes are tested consistent with sections  
32 320.350 to 320.374 for any other purpose;

33           (8) Testing performed or sponsored by the state fire marshal to  
34 determine a cigarette's compliance with the performance standard  
35 required shall be conducted in accordance with this section.

36           2. Each cigarette listed in a certification submitted under section  
37 320.356 that uses lowered permeability bands in the cigarette paper to  
38 achieve compliance with the performance standard set forth in this  
39 section shall have at least two nominally identical bands on the paper  
40 surrounding the tobacco column. At least one complete band shall be  
41 located at least fifteen millimeters from the lighting end of the  
42 cigarette. For cigarettes on which the bands are positioned by design,  
43 there shall be at least two bands fully located at least fifteen  
44 millimeters from the lighting end and ten millimeters from the filter  
45 end of the tobacco column, or ten millimeters from the labeled end of  
46 the tobacco column for nonfiltered cigarettes.

47           3. A manufacturer of a cigarette that the state fire marshal  
48 determines cannot be tested in accordance with the test method  
49 described in subdivision (1) of subsection 1 of this section shall propose  
50 a test method and performance standard for the cigarette to the state  
51 fire marshal. Upon approval of the proposed test method and a  
52 determination by the state fire marshal that the performance standard  
53 proposed by the manufacturer is equivalent to the performance  
54 standard prescribed in subdivision (3) of subsection 1 of this section,  
55 the manufacturer may employ such test method and performance  
56 standard to certify such cigarette under section 320.356. If the state  
57 fire marshal determines that another state has enacted reduced  
58 cigarette ignition propensity standards that include a test method and  
59 performance standard that are the same as those contained in sections  
60 320.350 to 320.374, and the state fire marshal finds that the officials  
61 responsible for implementing such requirements have approved the  
62 proposed alternative test method and performance standard for a  
63 particular cigarette proposed by a manufacturer as meeting the fire  
64 safety standards of that state's law or regulation under a legal  
65 provision comparable to this section, the state fire marshal shall  
66 authorize such manufacturer to employ the alternative test method and  
67 performance standard to certify such cigarette for sale in this state,  
68 unless the state fire marshal demonstrates a reasonable basis why the  
69 alternative test should not be accepted under sections 320.350 to  
70 320.374. All other applicable requirements of this section shall apply  
71 to the manufacturer.

72           4. Each manufacturer shall maintain copies of the reports of all  
73 tests conducted on all cigarettes offered for sale for a period of three  
74 years, and shall make copies of such reports available to the state fire  
75 marshal and the attorney general upon written request. Any  
76 manufacturer who fails to make copies of such reports available within  
77 sixty days of receiving a written request shall be subject to a civil  
78 penalty not to exceed ten thousand dollars for each day after the  
79 sixtieth day that the manufacturer does not make such copies available.

80           5. The state fire marshal may adopt a subsequent ASTM Standard  
81 Test Method for Measuring the Ignition Strength of Cigarettes upon a  
82 finding that such subsequent method does not result in a change in the  
83 percentage of full-length burns exhibited by any tested cigarette when

84 compared to the percentage of full-length burns the same cigarette  
85 would exhibit when tested in accordance with ASTM Standard E2187-04  
86 and the performance standard in subdivision (3) of subsection 1 of this  
87 section.

88 6. The state fire marshal shall review the effectiveness of this  
89 section and report every three years to the general assembly the state  
90 fire marshal's findings and, if appropriate, recommendations for  
91 legislation to improve the effectiveness of sections 320.350 to  
92 320.374. The report and legislative recommendations shall be submitted  
93 by June thirtieth following the conclusion of each three-year period.

94 7. The requirements of subsection 1 of this section shall not  
95 prohibit:

96 (1) Wholesale or retail dealers from selling their existing  
97 inventory of cigarettes on or after the effective date of sections 320.350  
98 to 320.374 if the wholesale or retail dealer can establish that state tax  
99 stamps were affixed to the cigarettes prior to such effective date and  
100 the wholesale or retail dealer can establish that the inventory was  
101 purchased prior to such effective date in comparable quantity to the  
102 inventory purchased during the same period of the prior year; or

103 (2) The sale of cigarettes solely for the purpose of consumer  
104 testing. For purposes of this subdivision, "consumer testing" means an  
105 assessment of cigarettes that is conducted by a manufacturer, or under  
106 the control and direction of a manufacturer, for the purpose of  
107 evaluating consumer acceptance of such cigarettes, utilizing only the  
108 quantity of cigarettes that is reasonably necessary for such assessment.

109 8. Sections 320.350 to 320.374 shall be interpreted and construed  
110 to effectuate its general purpose so that sections 320.350 to 320.374 are  
111 uniform with the laws of the states that have enacted reduced cigarette  
112 ignition propensity laws as of the date sections 320.350 to 320.374 are  
113 effective.

320.356. 1. Each manufacturer shall submit to the state fire  
2 marshal a written certification attesting that each cigarette listed in  
3 the certification has been tested in accordance with and meets the  
4 performance standard set forth in section 320.353.

5 2. Each cigarette listed in the certification shall be described  
6 with the following information:

7 (1) Brand or trade name on the package;

- 8           (2) Style, such as light or ultra light;  
9           (3) Length in millimeters;  
10          (4) Circumference in millimeters;  
11          (5) Flavor, such as menthol or chocolate, if applicable;  
12          (6) Filter or nonfilter;  
13          (7) Package description, such as soft pack or box;  
14          (8) Marking under section 320.359;  
15          (9) The name, address, and telephone number of the laboratory,  
16 if different than the manufacturer that conducted the test; and  
17          (10) The date that the testing occurred.

18          3. The state fire marshal shall make the certifications available  
19 to the attorney general for purposes consistent with sections 320.350 to  
20 320.374 and the department of revenue for purposes of ensuring  
21 compliance with this section.

22          4. Each cigarette certified under this section shall be recertified  
23 every three years.

24          5. For each cigarette listed in a certification, a manufacturer  
25 shall pay to the state fire marshal a two hundred fifty dollar fee. The  
26 state fire marshal shall be authorized to annually adjust this fee to  
27 ensure it defrays the actual costs of the processing, testing,  
28 enforcement, and oversight activities required by sections 320.350 to  
29 320.374.

30          6. If a manufacturer has certified a cigarette under this section  
31 and thereafter makes any change to such cigarette that is likely to alter  
32 its compliance with the reduced cigarette ignition propensity standards  
33 required by sections 320.350 to 320.374, such cigarette shall not be sold  
34 or offered for sale in this state until the manufacturer retests the  
35 cigarette in accordance with the testing standards and maintains  
36 records of such retesting as required by section 320.353. Any altered  
37 cigarette which does not meet the performance standard set forth in  
38 section 320.353 shall not be sold in this state.

320.359. 1. Cigarettes that are certified by a manufacturer in  
2 accordance with section 320.356 shall be marked to indicate compliance  
3 with the requirements of section 320.353. The marking shall be in  
4 eight-point type or larger and consist of the letters FSC, which signifies  
5 fire standard compliant, permanently printed, stamped, engraved, or  
6 embossed on the package at or near the UPS Code.

7           2. A manufacturer shall use only one marking and shall apply  
8 such marking uniformly for all packages, including but not limited to  
9 packs, cartons, and cases, and brands marketed by such manufacturer.

10           3. Manufacturers certifying cigarettes in accordance with section  
11 320.356 shall provide a copy of the certifications to all wholesale  
12 dealers and agents to which they sell cigarettes. Wholesale dealers,  
13 agents, and retail dealers shall permit the state fire marshal, the  
14 department, the attorney general, and their employees to inspect  
15 markings of cigarette packaging marked in accordance with this  
16 section.

          320.362. 1. A manufacturer, wholesale dealer, agent, or other  
2 person or entity who knowingly sells or offers for sale cigarettes, other  
3 than through retail sale, in violation of section 320.353 shall be subject  
4 to a civil penalty not to exceed one hundred dollars for each pack of  
5 such cigarettes sold or offered for sale; provided that, in no case shall  
6 the penalty against any such person or entity exceed one hundred  
7 thousand dollars during any thirty-day period.

8           2. A retail dealer who knowingly sells or offers for sale cigarettes  
9 in violation of section 320.353 shall be subject to a civil penalty not to  
10 exceed one hundred dollars for each pack of such cigarettes sold or  
11 offered for sale; provided that, in no case shall the penalty against any  
12 retail dealer exceed twenty-five thousand dollars for sales or offers for  
13 sale during any thirty-day period.

14           3. In addition to any other penalty prescribed by law, any  
15 corporation, partnership, sole proprietorship, limited partnership, or  
16 association engaged in the manufacture of cigarettes that knowingly  
17 makes a false certification under section 320.356 shall be subject to a  
18 civil penalty of at least seventy-five thousand dollars but not exceeding  
19 two hundred fifty thousand dollars for each such false certification.

20           4. Any person who violates any other provision of sections  
21 320.350 to 320.374 shall be subject to a civil penalty for a first offense  
22 not to exceed one thousand dollars and for any subsequent offense a  
23 civil penalty not to exceed five thousand dollars for each such  
24 violation.

25           5. Whenever any law enforcement personnel or authorized  
26 representative of the state fire marshal discovers any cigarettes for  
27 which no certification has been filed as required by section 320.356 or

28 that have not been marked in the manner required by section 320.359,  
29 such personnel are authorized and empowered to seize and take  
30 possession of such cigarettes. Cigarettes seized under this section shall  
31 be destroyed; provided, however, that prior to the destruction of any  
32 cigarette seized under such provisions, the true holder of the  
33 trademark rights in the cigarette brand shall be permitted to inspect  
34 the cigarette.

35 6. In addition to any other remedy provided by law, the attorney  
36 general may file an action in a court of competent jurisdiction for a  
37 violation of sections 320.350 to 320.374, including petitioning:

38 (1) For injunctive relief against any manufacturer, importer,  
39 wholesale dealer, retail dealer, agent, or any other person or entity to  
40 enjoin such entity from selling, offering for sale, or affixing tax stamps  
41 to any cigarette that does not comply with the requirements of sections  
42 320.350 to 320.374; or

43 (2) To recover any costs or damages incurred by the state as a  
44 result of such violation, including enforcement costs relating to the  
45 specific violation and attorney's fees.  
46 Each violation of sections 320.350 to 320.374 or rules promulgated  
47 thereto shall constitute a separate civil violation for which the state  
48 fire marshal or attorney general may obtain relief. Upon obtaining  
49 judgment for injunctive relief under this section, the state fire marshal  
50 or attorney general shall provide a copy of the judgment to all  
51 wholesale dealers and agents to which the cigarettes have been sold.

320.365. 1. The department of revenue may promulgate rules to  
2 implement the provisions of sections 320.350 to 320.374. Any rule or  
3 portion of a rule, as that term is defined in section 536.010, RSMo, that  
4 is created under the authority delegated in sections 320.350 to 320.374  
5 shall become effective only if it complies with and is subject to all of  
6 the provisions of chapter 536, RSMo, and, if applicable, section 536.028,  
7 RSMo. Sections 320.350 to 320.374 and chapter 536, RSMo, are  
8 nonseverable and if any of the powers vested with the general assembly  
9 pursuant to chapter 536, RSMo, to review, to delay the effective date,  
10 or to disapprove and annul a rule are subsequently held  
11 unconstitutional, then the grant of rulemaking authority and any rule  
12 proposed or adopted after the effective date of this section shall be  
13 invalid and void.



14           2. The department, in the regular course of conducting  
15 inspections of wholesale dealers, agents, and retail dealers as  
16 authorized under section 149.041, RSMo, may inspect such cigarettes to  
17 determine if the cigarettes are marked as required by section 320.359. If  
18 the cigarettes are not marked as required, the department shall notify  
19 the state fire marshal.

          320.368. To enforce the provisions of sections 320.350 to 320.374,  
2 the attorney general, the department, the state fire marshal, and other  
3 law enforcement personnel are authorized to examine the books,  
4 papers, invoices, and other records of any person in possession, control,  
5 or occupancy of any premises where cigarettes are placed, stored, sold,  
6 or offered for sale, as well as the stock of cigarettes on the  
7 premises. Every person in the possession, control, or occupancy of any  
8 premises where cigarettes are placed, sold, or offered for sale is  
9 directed and required to give the attorney general, the department, and  
10 the state fire marshal, their authorized representatives, and other law  
11 enforcement personnel the means, facilities, and opportunity for the  
12 examinations authorized by this section.

          320.371. 1. There is hereby created in the state treasury the  
2 "Cigarette Fire Safety Standard and Firefighter Protection Act Fund"  
3 which shall consist of moneys collected under sections 320.350 to  
4 320.374. The state treasurer shall be custodian of the fund and may  
5 approve disbursements from the fund in accordance with sections  
6 30.170 and 30.180, RSMo. The fund shall be administered by the state  
7 fire marshal. Upon appropriation, moneys in the fund shall be made  
8 available to the state fire marshal to support fire safety and prevention  
9 programs.

10           2. Notwithstanding the provisions of section 33.080, RSMo, to the  
11 contrary, any moneys remaining in the fund at the end of the biennium  
12 shall not revert to the credit of the general revenue fund.

13           3. The state treasurer shall invest moneys in the fund in the  
14 same manner as other funds are invested. Any interest and moneys  
15 earned on such investments shall be credited to the fund.

          320.374. 1. Nothing in sections 320.350 to 320.374 shall be  
2 construed to prohibit any person or entity from manufacturing or  
3 selling cigarettes that do not meet the requirements of section 320.353  
4 if the cigarettes are or will be stamped for sale in another state or are

5 packaged for sale outside the United States and such person or entity  
6 has taken reasonable steps to ensure that such cigarettes will not be  
7 sold or offered for sale to persons located in this state.

8 2. Sections 320.350 to 320.374 shall terminate if a federal  
9 cigarette ignition propensity standard that preempts sections 320.350  
10 to 320.374 is enacted.

11 3. Sections 320.350 to 320.374 preempt any local law, ordinance,  
12 or regulation that conflicts with any provision of sections 320.350 to  
13 320.374 or any policy of the state implemented in accordance with  
14 sections 320.350 to 320.374. Notwithstanding any other provision of law,  
15 the local governmental units of this state may neither enact nor enforce  
16 any ordinance or other local law or regulation conflicting with, or  
17 preempted by, any provision of sections 320.350 to 320.374 or with any  
18 policy of this state expressed by sections 320.350 to 320.374 whether  
19 that policy is expressed by inclusion of a provision in such sections or  
20 by exclusion of that subject from such sections.

Section B. Section A of this act shall become effective September 1, 2010.